IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2923 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUBHASHKUMAR DHANJIBHAI THAKKAR

Versus

PRAJAPATI KASTURBHAI MADHABHAI & ORS.

Appearance:

1. Special Civil Application No. 2923 of 2001

MR SL VAISHYA for Petitioner

MR KS JHAVERI for Respondents No. 1-2

RULE SERVED for Respondent No. 3

MR MH RATHOD for Respondent No. 4

MS NANDINI JOSHI AGP for Respondent No. 5

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 05/12/2001

ORAL JUDGEMENT

1. The present petition is filed by one Subhashchandra Dhanjibhai Thakkar seeking the following reliefs :

> The Hon'ble Court may be pleased to issue a writ of certiorari or any other writ, direction or order, and the Hon'ble Court may be further pleased to quash and set aside the order of the respondent no.5 in Revision Application No.168/1991 being NPL-452000-6580-M dated 26.02.2001 and further be pleased to quash and set aside the order of the Collector in A-Jamin-2-Vashi-925 dated 20.09.1991 and No. A-Jamin-2-Vashi-924 dated 20.09.1991 regarding the Resolution of the respondent no.4, and the Hon'ble Court may be pleased to cancel the said resolution which was made in favour of the respondent no.1 regarding the question land in the interest of justice.
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> The petitioner has also prayed that the Court may be pleased to grant the application of the petitioner dated 17.03.82 which was given to the respondent no.4 for demanding the land.

2. The learned Advocate appearing for the petitioner is not able to make out any case. His submission is that the petitioner made an application on 17th March, 1982. He corrected the same and said that the application was made on 21st January, 1982, as is mentioned in the reply dated 11th March, 1982 given by the Office of the Nagarpalika to the petitioner, a copy of which is produced at page 33 as a part of Annexure-C collectively. The learned Advocate appearing for the petitioner submitted that by the said reply, Nagarpalika asked the petitioner to supply the missing details in his application dated 21st January, 1982. The learned Advocate for the petitioner did not notice paragraph 1 of the said reply, wherein it is said that "He shall make a new application by affixing the court fee stamp of 65 ps. and the application already filed is closed." The learned Advocate pointed out the last paragraph of the said reply which says that "The aforesaid details be produced along with your application, failing which your application will be required to be filed (closed)." The last paragraph refers to the `new application' which is to be filed by the petitioner as the first paragraph has already stated that his earlier application dated 21st January, 1982 is already filed (closed). The case of the petitioner is that after having received that reply, he made an application on 17th March, 1982, a copy of which

is produced at page 36, wherein he has stated that "Pursuant to your reply dated 11th March, 1982, the demanded details are hereby produced and further action is requested." A reading of this letter says that the petitioner has not made any fresh application, as required under reply dated 11th march, 1982. Thereafter, it seems that the petitioner has filed another application dated 17th June, 1982, a copy of which is produced at page 36, wherein it is stated that the petitioner requires the land for business. He had an intention of starting a restaurant and for which, he wanted the land urgently. He wanted the open land in front of the land bearing Sit No. 33, Survey No. 906 be allotted to him. It is also stated in the said application that a xerox copy of the plan of the said plot is annexed. However, no such plan is annexed in the petition along with a copy of the application which is at page no. 35. The learned Advocate appearing for the petitioner at the time of argument submitted that he has produced a plan, but, the same is not properly paged. Despite efforts, he is not able to point out the plan.

3. The grievance of the petitioner is that Deesa Nagarpalika, respondent no.4, which is represented through its Chief Officer, passed a resolution on 22nd May, 1990 whereby certain lands were resolved to be given to the persons mentioned in the said resolution, the application of the petitioner pending for grant of land was not considered by the Deesa Nagarpalika. On a query from the Court as to, `what the petitioner did after 1982 till the date of resolution i.e. 22nd May, 1990', the learned Advocate appearing for the petitioner has no reply. It is clear from the reply of the Municipality dated 11th March, 1982 that the application of the petitioner dated 21st March, 1982 was already filed/ closed, and the petitioner was advised to file a fresh application with the details mentioned in the said reply. Not only that it was conveyed to the petitioner that if his new application is also without those details, the same will also be filed/closed. Pursuant to the reply, the petitioner wrote a letter dated 17th March, 1982, as mentioned hereinabove, which cannot be considered as a new application, as it was not with required details. Further, even the application dated 17th June, 1982 was also without any details, which were required to be accompanied with the new application. As mentioned in the reply, if in absence of these details, Deesa Nagarpalika has not considered the application of the petitioner assuming the letter dated 17th June, 1982 to be an application, it cannot be said that Deesa Nagarpalika has acted in a manner prejudicial to the

rights of the petitioner.

4. The learned Advocate appearing for the petitioner relied upon a judgement of this Court in the matter of Maitrinagar Employees (Karmachari) Cooperative Housing Society Ltd. vs. State of Gujarat & Ors., reported at 1997 (4) GCD 393 (Guj.). Mr. Vaishya, learned Advocate for the petitioner, is not able to point out any portion from the judgement on which he is placing reliance, which is relevant to the facts of the present case. In the opinion of the Court, the said judgement has no application to the facts of the present case.

5. In view of the aforesaid discussion as the petitioner had made an application on 21st January, 1982, which was replied by Deesa Nagarpalika, and as the petitioner has not made a fresh application with the details which were called for by the respondent-Nagarpalika, it cannot be said that the authorities have acted in any manner prejudicial to the rights of the petitioner. In view of that, the present petition is dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

The learned Advocate appearing for the petitioner requests for continuing the interim relief granted earlier. On having found no substance in the petition, the request made by the learned Advocate for the petitioner to continue the interim relief, is rejected.

(Ravi R. Tripathi, J.)
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